REMARKS

Reexamination and Reconsideration of the rejections and objections is requested. Upon entry of the Amendment Claims 1-108 are pending in the application. The claims have been amended. No new matter has been added.

The §112 Rejection

The Examiner has rejected Claim 103 under 35 U.S.C. §112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which Applicant regards as the invention. Claim 103, as amended, is believed to obviate the Examiner's rejection. Parentheses have been replaced by commas to indicate that the material formerly in parentheses is part of the claims. The rejection is requested to be withdrawn.

The §102 Rejection

The Examiner has rejected Claims 72-78 under 35 U.S.C. §102(e) as being anticipated by Wilhoit, et al., U.S. Patent No. 5,928,740. The Examiner previously rejected Claims 1-21, 23-32, 43-52, 64-78 and 80-84 under 35 U.S.C. §102(e) for anticipation, citing U.S. Patent No. 5,928,740 (Wilhoit, et al.).

Claims 72-77 all claim a polymer blend, while Claim 78 is a dependent claim which claims a film made from this blend.

Applicants traverse this rejection for the following reasons.

The Examiner states, in pertinent part:

> ...Wilhoit et al teach...the blend has a first polymer comprising a copolymer of ethylene and at least one C_3-C_{10} α-olefin having a polymer melting point between 55 and 75°C (*the first polymer of the instant invention*);... (Emphasis added by the Examiner). (Paper No. 11, Page 2, Paragraph 5).

However, Applicants' Claims 72-78 all require "...a first polymer having a melting point of 80 to 98°C..." There is no overlap in the described melting point range and therefore, the two polymers are not the same. Thus, there is no anticipation and the use by Wilhoit, et al. of a different first polymer having a substantially lower melting point teaches away from use of the first polymer referenced to by the Examiner. In view of the above remarks, the rejection is traversed and it is requested to be withdrawn.

The Examiner also states that the terpolymers of Wilhoit encompass interpolymers, but a terpolymer is not necessarily an interpolymer and Wilhoit '740 does not mention or suggest use of interpolymers.

The present invention defines "interpolymer" thusly,

> "...An interpolymer means a polymer product comprising at least two polymers *e.g.* copolymers of ethylene which are polymerized in either a single reactor or separate multiple reactors operated in parallel or series, *e.g.* as described in Parikh, et al. PCT Application No. US92/11269 (Publication No. WO93/13142) entitled "Ethylene Interpolymer Polymerizations" filed December 29, 1992 claiming a U.S. priority Serial No. 07/815,716, filed December 30, 1991, which application and disclosure is hereby incorporated by reference in its entirety." (*See*, Page 70, antepenultimate line to Page 71, line 12).

Therefore, it is clear that the description of terpolymers in Wilhoit '740 does not suggest use of the interpolymers as presently claimed. The Examiner's reference to Claims 77-83 in the last line of Paragraph 5 of Paper No. 11 is understood to be a typographical error since the Examiner's argument does not relate to the specific subject matter of Claims 79-83 and the above reply is based upon the initially stated referral to Claims 72-78. If the Examiner intended otherwise, then an explanation of the pertinence of the §102(e) rejection to these claims is requested.

The §103 Rejection

The Examiner has rejected Claims 80, 81, 84 and 85 under 35 U.S.C. §103(a) as being unpatentable over Wilhoit, et al.

Claims 80, 81, 84 and 85 are all process claims. The above argument made with respect to the §102(e) rejection in general and to the distinctions between the first polymer of Wilhoit, et al. '740 and the instant first polymer are reiterated. The first polymers of the reference and the presently claimed invention are clearly different and one does not teach the other.

The Double Patenting Rejection

Claims 1-108 are provisionally rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over Claims 1-111 of copending Application No. 09/431,931, in view of Wilhoit, et al., U.S. Patent No. 5,928,740.

Reconsideration of this rejection is respectfully requested. The "first polymer" of copending Application No. 09/431,931 is required to be a copolymer of ethylene and octene –1, whereas the present invention requires the first polymer to be a copolymer of ethylene and hexene –1. Hence, there is no species-genus overlap between these two cases.

It is further submitted that both Application Nos., 09/431,931 and 09/401,692, claimed the benefit of U.S. Application No. 09/110,455, filed July 7, 1998, as the earliest filing date for both applications and as such under 35 U.S.C. §154(a)(2), both applications, if granted, will have identical terms based upon that same starting point. Accordingly, there is no possibility of any "unjustified or improper timewise extension of the 'right to exclude' granted by a patent..." Thus, the public policy underpinning the judicially created obviousness-type double patenting doctrine is inapposite. The terms of any patents granted would be based on the same starting date and therefore, Applicants should not be put to the burden and expense of filing a terminal disclaimer which is meaningless with respect thereto.

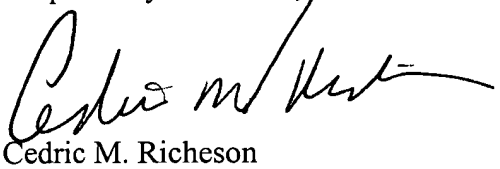
The lack of a public policy reason for this rejection notwithstanding, it is improper and should be withdrawn primarily for the reason that the claims are different, patentably distinct, requiring different first polymers.

The Drawings:

The Examiner also submitted, without comment, an ironically barely legible copy of a sheet entitled "INFORMATION ON HOW TO EFFECT DRAWING CHANGES." There is no indication that any informality or objection to the drawings has been made by the Examiner. Nonetheless, additional drawings are submitted herewith to address any possible concerns. If these, or the originally filed drawings are unsuitable for any reason, it is requested that the nature of any defect be specified so that it may be addressed.

In view of the above amendment and remarks, reexamination and reconsideration of all the rejections are requested, and allowance of all the claims is earnestly solicited.

Respectfully submitted,



Cedric M. Richeson
Registration No. 29,339

BEMIS COMPANY, INC.
Patent And Trademark Department
2200 Badger Avenue
Oshkosh, WI 54904
Telephone: 920-303-7812
Facsimile: 920-303-7810
Customer No. 30482

Version With Markings To Show Changes Made:

103. (Amended) A film, as defined in Claim 87, wherein said third copolymer of both said second and fourth layers comprises 4 to 18%, [(]by weight of said copolymer[)], of a vinyl ester or alkyl acrylate.